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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,868	12/15/2000	Jeffrey E. Stahmann	279.327US1	9777

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EXAMINER

DROESCH, KRISTEN L

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 07/17/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/738,868

Applicant(s)

STAHMANN ET AL.

Examiner

Kristen L Droesch

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26,29,30 and 39 is/are allowed.
- 6) ☒ Claim(s) 1-25,27,28,31-38 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8,9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3762

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 31-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A histogram is non-functional descriptive material as explained in MPEP 2106 IV B 1 (b).

### *Claim Objections*

3. Claims 17-18 are objected to because of the following informalities: "the programmer" is inconsistent with "the device" of claim 1. Appropriate correction is required.
4. Claim 40 is objected to because of the following informalities: it is incorrectly dependent on claim 35. The examiner suggests changing the claim to be dependent on claim 39. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 13, 23, 27, 28, 38, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 13, 28, 38, and 40 each recite the limitations: "RVS", "RVP" and "LVP" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3762

8. Claims 23, recites the limitations: "RVS", "RVP" and "LVP" in lines 4-6. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 27 recites the step of "providing" in line 1. There is insufficient antecedent basis for this limitation in the claim. The examiner suggests "displaying"

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Valikai et al. (5,948,005).

Regarding claims 1, 19, 21, and 25, Valikai et al. shows a device (20) comprising circuitry (74, 76) for communicating with a medical device and a display for providing a histogram of data (Figs. 6-8; Col. 3, lines 35-45).

With respect to claims 17-18, Valikai et al. shows the device displays data using a monitor or printer (Fig. 4; Col. 3, lines 35-45).

The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art. Specifically, the statements of intended use that have not been considered because they are applicable to the type of data and the locations of the measurements made by the medical device. The medical

Art Unit: 3762

device has not been positively recited as an element of the claims. The Valikai et al. device would be capable of displaying this type of data in histograms, provided this data was received from a medical device.

12. Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Conley et al. (6,415,175).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 19, 21, and 25, Conley et al. shows a device (60) comprising circuitry (106) for communicating with a medical device and a display for providing a histogram of data (Figs. 3, 6A-6B).

With respect to claims 17-18, Conley et al. shows the device displays data using a monitor (102) or a printer (Figs. 3, 6A-6B; Col. 8, lines 27-41).

The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art. Specifically, the statements of intended use that have not been considered because they are applicable to the type of data and the locations of the measurements made by the medical device. The medical device has not been positively recited as an element of the claims. The Conley et al. device

Art Unit: 3762

would be capable of displaying this type of data in histograms, provided this data was received from a medical device.

*Allowable Subject Matter*

13. Claims 26, 29-30, and 39 are allowed.

14. Claims 27-28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

15. Claim 40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph and the minor informality objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art of record fails to teach or suggest a method or computer readable medium encoded with software executing the method of retrieving data regarding cardiac events at two or more sites; and displaying the data in a histogram as two or more statistical distributions for the two or more sites and the histogram includes a right ventricular cardiac distribution and a left ventricular cardiac event distribution. Conley et al. shows a method of retrieving data regarding cardiac events at two or more sites; and displaying the data in a histogram as two or more statistical distributions for the two or more sites, however Conley et al. does fails to teach or suggest the histogram includes a right ventricular cardiac distribution and a left ventricular cardiac event distribution, rather Conley et al. shows a right ventricular cardiac distribution and a right atrium cardiac event distribution.

Art Unit: 3762

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen L Droesch whose telephone number is 703-605-1185. The examiner can normally be reached on M-F, 10:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes can be reached on 703-308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Kristen Droesch*  
kld

July 11, 2003

*Kennedy Schaezle*  
KENNEDY SCHAEZLE  
PRIMARY EXAMINER  
7-12-03